

STEEL MANUFACTURERS ASSOCIATION

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BY FACSIMILE

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce, Room 2111
1401 Constitution Avenue, NW
Washington, DC 20230

**Re: Steel Manufacturers Association – Response to Request for
Comments on ThyssenKrupp Steel & Stainless USA, LLC Application
for Subzone Status in Calvert, Alabama**

Dear Mr. McGilvray:

SMA submits these comments in opposition to the application filed by the City of Mobile, Alabama on behalf of ThyssenKrupp Steel and Stainless USA, LLC and its affiliates (“ThyssenKrupp”) to establish a foreign trade subzone at the ThyssenKrupp facilities in Calvert, Alabama. These comments are filed in response to the Foreign-Trade Zones Board’s request for public comment published in the October 7, 2008 Federal Register. 73 Fed. Reg. 58,535 (Oct. 7, 2008) (Notice of Application for Subzone: ThyssenKrupp Steel and Stainless USA, LLC, Calvert, AL) (hereinafter “the Notice”).

As set forth below, the ThyssenKrupp application fails to demonstrate that the subzone meets the basic public interest requirements set forth in the Foreign Trade Zones Act and regulations, and therefore, should be denied.

SMA consists of 36 North American companies that operate 125 steel plants and employ approximately 40,000 people. SMA members produce over 70% of the steel made in the U.S. The SMA also has 121 Associate Member companies who provide goods and services to the steel industry, and six international steel company members in countries outside of North America. The U.S. member companies of the SMA are widely dispersed geographically, represented in the United States Congress by 122 Congressional Districts in 37 states. Specifically in Alabama, SMA has three member companies with five steel facilities producing approximately 4.5 million tons of steel per year.

SMA is the primary trade association for scrap-based electric arc furnace (EAF) steelmakers and rerollers. In 2007, EAF's produced approximately 64 million tons, or 59% of the total steel manufactured in the U.S. It is estimated that in 2008, EAF's will produce more than 60% of the steel made in the United States.

If the subzone application is approved, ThyssenKrupp would import the following products for use in manufacturing stainless and carbon steel:

<u>Commodity</u>	<u>Rate of Duty</u>
Ferrochromium	1.9% to 3.1%
Ferrocolumbium	5%
Ferrosilicon	1.1% to 5.8%
Ferroboron	5%
Ferrosilicon Manganese	3.9%
Molybdenum	9.1¢/kg to 13.9¢/kg on moly content
Titanium	Free to 15%
Zinc	.5¢/kg to 4.2%

In most cases, the duty on finished stainless and carbon steel mill products is 0%, resulting in a significant inverted tariff with the imported raw materials. By electing non-

privileged status, ThyssenKrupp could apply the 0% duty to the value of the dutiable raw materials once the finished steel products enter into the commerce of the United States. ThyssenKrupp projects that the inverted tariff benefit would result in an annual savings of up to \$5 million, which would comprise 99% of the projected savings arising out of the subzone. Any other benefits arising out of the subzone would be minimal

The Foreign Trade Zones Board ("the Board") should not approve the application for ThyssenKrupp's plant insofar as the application seeks manufacturing subzone status primarily for the purpose of avoiding the duties on the raw materials used in the production of stainless steel and carbon steel. ThyssenKrupp fails to satisfy the threshold regulatory criteria established by the Foreign Trade Zones Board in these circumstances. Furthermore, the approval of the subzone application will have a detrimental effect on the domestic steel industry, which is already under severe competitive pressure from unfairly-traded imports.

The Board has held manufacturing subzones to a higher level of scrutiny than general purpose zones since they are single-user facilities, which are not structured to serve the public. The Board will, accordingly, reject a subzone application if it determines affirmatively that either: (1) the activity is inconsistent to U.S. trade and tariff law, or policy which has been formally adopted by the Executive Branch; (2) Board approval of the activity would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or (3) the activity involves items subject to quantitative import controls or **inverted tariffs** and the use of the zone procedures would be the direct and sole cause of imports, that would not likely have occurred if zone procedures were not allowed. *See* 15 C.F.R. §400.31(b)(1). If none of the aforementioned criteria apply, the Board is then instructed to consider the "net economic effect" of the proposed

activity, including consideration of the impact of the subzone on the related domestic industry. *See* 15 C.F.R. §400.31(b)(2).

Taking into account this legal framework, the Board should deny the ThyssenKrupp subzone application. Approval of a manufacturing subzone, which has as its sole benefit, the avoidance of customs duties on imported raw materials flies directly in the face of this legal framework.

First, ThyssenKrupp's application provides no direct evidence that the threshold criteria set forth in the regulations have been satisfied. ThyssenKrupp's subzone application merely states "ThyssenKrupp's proposed activity meets the threshold factors requirement of 15 C.F.R. §400.31(b)(1)." That is it. ThyssenKrupp has not satisfied its burden to prove that the threshold criteria have been satisfied, and that it is even entitled to a net economic benefits analysis.

Second, the regulations provide that it is the policy of the Board to authorize zone activity only when it is consistent with public policy and, in regard to activity involving foreign merchandise subject to quotas or inverted tariffs, when zone procedures are not the sole determining cause of imports. There is every indication from the application that subzone status would be the direct and sole cause of imports, which would not likely to have occurred if zone procedures were not allowed. This would compel denial of the application even without consideration of the net economic consequences.

The ThyssenKrupp application, for example, states that the subzone is "an important operation element necessary to help the U.S. based facility stay competitive in the North American steel marketplace." (emphasis added). Furthermore, the application acknowledges that 99% of the expected \$5 million annual savings will come as a result of an inverted tariff. Taken

together, these two statements suggest that, but for subzone status, these imports would not have occurred.

Finally, even if the Board were required to undertake a “net economic benefits” analysis, it should determine that approval of ThyssenKrupp’s subzone application would harm the related domestic industry. SMA members are already under immense competitive pressure from unfairly traded imports. The numerous antidumping and countervailing duty orders in place on finished steel mill products -- including orders imposed on some of ThyssenKrupp’s global affiliates -- provide strong evidence of that fact. Domestic producers will also be at a competitive disadvantage if they must pay up to 15% in duties on certain imports of raw materials while ThyssenKrupp is able to avoid the payment of duties on those same imports. In addition, domestic raw material suppliers who produce many of these same inputs will be hurt as a result of ThyssenKrupp’s ability to purchase these materials abroad duty free. Raw material prices are already volatile due to a number of market place factors and distortions. The U.S. government should not be providing tariff preferences that distort the relative pricing of these materials, or that favor one steel producer over another. The U.S. government also should not be providing tariff relief to a single consumer of these raw materials at the expense of domestic producers of those same raw materials.

Further, ThyssenKrupp has the burden of proving positive economic consequences. Given the impact the subzone will have on the competitiveness of the SMA members, the steel industry at-large, and domestic producers of raw materials, we do not believe the subzone

application, as written, demonstrates the positive net economic consequences of the subzone, which in the case of ThyssenKrupp, amounts to nothing more than a \$5 million subsidy.

Based on these facts, SMA respectfully requests that the Board deny ThyssenKrupp's subzone application. According to 15 C.F.R. § 400.31(b)(iii), the Board shall deny an application, without undertaking a review of the economic factors set forth in the regulations, if it determines that subject imports would likely not occur if the subzone was not allowed. We believe that to be the case in connection with this application.

Even if the Board determines that the threshold factors are satisfied, approval still would not be appropriate given that ThyssenKrupp has failed to meet its burden of showing that the granting of subzone status would have a positive net economic effect.

There is no right under law to establish a foreign-trade subzone. On the contrary, the power to establish a subzone is a "privilege," to be conferred only by the Board and only upon a finding that the proposed subzone satisfies the public interest purposes of the Foreign Trade Zones Act. See 19 U.S.C. § 81g. ThyssenKrupp has not proven it satisfies those purposes. Accordingly, the Board should deny the application.

We appreciate the Board's efforts in this matter, and please feel free to contact me if you have any further comments or questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Danjczek", with a stylized flourish at the end.

Thomas A. Danjczek
President
Steel Manufacturers Association

cc: SMA Board of Directors